

Notice of Allowability

Application No.

10/057,237

Examiner

Eduardo C. Robert

Applicant(s)

HYDE, EDWARD R.

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 2/20/04 and interview on 4/2/04.
2. ☒ The allowed claim(s) is/are 1-31 and 42-48.
3. ☒ The drawings filed on 04 April 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Eduardo C. Robert
Primary Examiner
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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Thomas D. Kohler on April 2, 2004.

The application has been amended as follows:

Claims 32-41 and 49-55 have been canceled. It is noted that claims 32-41 and 49-55 are directed to non-elected claims.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest, a modular prosthetic assembly comprising a plurality of assembly modules, including at least a first and second modules, each of the assembly modules configured and dimensioned to be individually inserted through a first bone hole having a hole diameter, wherein the first module provides a portion of a uniform articular surface, second module provides a portion of the uniform articular surface, and the assembly modules are configured to fit together to form the prosthetic assembly within a site of interest as set forth in claim 1.

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Furthermore, no references, or reasonable combination thereof, could be found which disclose, or suggest, a modular prosthetic assembly comprising a cap piece having a surface part that defines at least a portion of a convex, uniform, articular surface; and a plurality of collar modules that fit around the cap piece, combining to form a prosthetic head assembly, wherein each of the plurality of collar modules defines a portion of the uniform articular surface as set forth in claim 42.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

EXAMINER'S COMMENT

Election/Restrictions

After further consideration and conversation with Mr. Kohler, on April 2, 2004, the examiner agrees with applicant's representative that the subject matter of claim 20 is directed to the elected Species and thus it has been rejoined.

Also, the examiner agrees with applicant about the correct list of claims (see applicant's remark on page 11, "Election/Restriction" section, of paper filed on February 20, 2004). The correct list of withdrawn claims is claims 32-41 and 49-55. These claims have been canceled.

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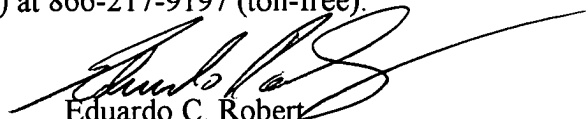
Double Patenting

The “provisional” double patenting rejections are the only rejections remaining in the application, however, the examiner **is withdrawing** the rejections to permit the application to issue as a patent (see MPEP 804(I)(B)), thereby converting the “provisional” application into a double patenting rejection in the other applications (Application No.’s 10/147,676 and 10/147,674), if applicable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo C. Robert whose telephone number is 703-305-7333. The examiner can normally be reached on Monday-Friday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Kevin P. Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eduardo C. Robert
Primary Examiner
Art Unit 3732

E.C.R.